

1 Amend 2 Cal. Code Regs. Section 18361.4, as follows:

2 18361.4. Probable Cause Proceedings.

3 (a) Probable Cause Report. If the Chief of the Enforcement Division decides to
4 commence ~~that~~ probable cause proceedings ~~should be commenced~~ pursuant to
5 Government Code ~~sections~~ Sections 83115.5 and 83116, he or she shall direct the
6 Enforcement Division staff to prepare a written report, hereafter referred to as "the
7 probable cause report." The probable cause report shall contain a summary of the law and
8 evidence gathered in connection with the investigation, including any exculpatory and
9 mitigating information of which the staff has knowledge and any other relevant material
10 and arguments. The evidence recited in the probable cause report may include hearsay,
11 including declarations of investigators or others relating the statements of witnesses or
12 concerning the examination of physical evidence.

13

14 (b) At least 21 days prior to any determination of probable cause, the Enforcement
15 Division staff shall provide the following ~~all proposed respondents shall be provided with~~
16 ~~the following~~, by service of process or registered mail with return receipt requested, to all
17 proposed respondents:

18

19 (1) A copy of the probable cause report;

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21 (2) Notification that the proposed respondents have the right to respond in writing to the
22 probable cause report and to request a probable cause conference at which the proposed

respondent may be present in person and represented by counsel, and;

(3) If the Commission met in executive session on this matter pursuant to ~~regulation 2~~
Cal. Code of Regulations Section 18361.2, a copy of any staff memoranda submitted to
the Commission at that time along with the ~~transcript~~ recording of any discussion
between the Commission and the staff at the executive session.

(c) Response to Probable Cause Report. Each proposed respondent may submit a written
response to the probable cause report. The response may contain a summary of evidence,
legal arguments, and any mitigating or exculpatory information.

Not later than 21 days following service of the probable cause report, a proposed
respondent shall file a ~~Each response must be filed~~ with the Executive Director and
~~provided~~ provide a copy, by service of process, or by registered or certified mail with
return receipt requested, to all other proposed respondents listed in the probable cause
report ~~not later than 21 days following service of the probable cause report.~~

The Commission staff may submit any evidence or argument in rebuttal not later than ten
days following the filing of a response with the Executive Director.

The Executive Director may extend the time limitations in this section ~~may be extended~~
~~by the Executive Director~~ for good cause. At any time prior to a determination of
probable cause, the Executive Director may allow additional material to be submitted as
part of the initial response or rebuttal.

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2 (d) Probable Cause Conference. Any proposed respondent may request ~~that~~ a probable
3 cause conference ~~be held. Such a~~ The request shall be served upon the Executive Director
4 and ~~upon~~ all other proposed respondents not later than 21 days after service of the
5 probable cause report unless the ~~time is extended by the~~ Executive Director extends the
6 time for good cause. The Executive Director shall fix a time for the probable cause
7 conference ~~shall be at a time fixed by the Executive Director and shall be conducted~~
8 conduct the conference informally. The conference shall be closed to the public unless a
9 proposed respondent requests and all other proposed respondents agree to a public
10 conference. If the conference is not public, only members of the Commission staff, any
11 proposed respondent and his or her legal counsel or representative shall have the right to
12 be present and participate. ~~In the discretion of the~~ The Executive Director, ~~witnesses may~~
13 ~~be allowed~~ allow witnesses to attend and participate in part or all of the probable cause
14 conference. In making this determination, the Executive Director shall consider the
15 relevancy of the witness' proposed testimony, whether the witness has a substantial
16 interest in the proceedings, and whether fairness requires that the witness be allowed to
17 participate. Representatives of any civil or criminal prosecutor with jurisdiction may ~~be~~
18 ~~present at~~ attend the conference at the discretion of the Executive Director if they agree to
19 respect the confidential nature of the proceedings. If the conference is not open to the
20 public and none of the parties or the presiding officer object ~~Barring objection by any of~~
21 ~~the parties and the presiding officer and provided it is not open to the public, the~~
22 conference may be conducted in whole or in part by telephone.

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1 The probable cause conference shall be ~~tape~~ recorded. The Executive Director may ~~make~~
2 ~~a determination as to~~ determine whether there is probable cause based solely on the
3 probable cause report, any responses or rebuttals filed and any arguments presented at the
4 probable cause conference by the interested parties. If the Executive Director ~~determines~~
5 ~~that~~ requires additional information is ~~needed~~ before determining whether there is
6 probable cause ~~can be determined~~, he or she may permit any party to submit additional
7 evidence at the probable cause conference.

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9 (e) Finding of Probable Cause. The Executive Director may find there is probable cause
10 to believe a violation has occurred if the evidence is sufficient to lead a person of
11 ordinary caution and prudence to believe or entertain a strong suspicion that a proposed
12 respondent committed or caused a violation. A finding of probable cause by the
13 Executive Director does not constitute a finding that a violation has actually occurred.

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15 The Executive Director shall not make a finding of probable cause if he or she is
16 presented with clear and convincing evidence that, at a time prior to the alleged violation,
17 the violator consulted with the staff of the Commission in good faith, disclosed truthfully
18 all the material facts, and committed the acts complained of either in reliance on the
19 advice of the staff or because of the ~~failure of the staff~~ staff's failure to provide advice.

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21 If the Executive Director makes a finding of probable cause, he or she shall prepare ~~cause~~
22 an Accusation ~~to be prepared~~ pursuant to Government Code ~~section~~ Section 11503 and
23 ~~shall cause~~ have it ~~to be~~ served upon the person or persons who are subjects of the

1 probable cause finding. The Executive Director shall publicly announce the finding of
2 probable cause ~~shall be announced publicly by the Executive Director~~. The
3 announcement shall contain a summary of the allegations and a cautionary statement that
4 the respondent is presumed to be innocent of any violation of the Act unless a violation is
5 proved in a subsequent proceeding. The Chief of the Enforcement Division shall be
6 responsible for ~~insuring~~ the presentation of the case in support of the Accusation at an
7 administrative hearing held pursuant to Government Code ~~section~~ Section 83116.

8 NOTE: Authority cited: Section 83112, Government Code.

9 Reference: Sections 83115, 83115.5 and 83116, Government Code.